

| |
|--|
| USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: 11/2/2021 |
|--|

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAVON DAVIS,

Plaintiff,

-against-

JOHN DOE #1; JOHN DOE #2; JOHN DOE #3;
JOHN DOE #4; JOHN DOE #5, ESU INTAKE
OBCC,

Defendants.

21-CV-8451 (AT)

ORDER OF SERVICE

ANALISA TORRES, United States District Judge:

Plaintiff, who is currently incarcerated in Ulster Correctional Facility, brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendants violated his federal constitutional rights when he was held in the Otis Bantum Correctional Center (OBCC) on Rikers Island. By order dated October 21, 2021, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis*.¹

DISCUSSION

A. *Valentin* order

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying a defendant. 121 F.3d 72, 76 (2d Cir. 1997). In the complaint, Plaintiff supplies sufficient information to permit the New York City Department of Correction (DOC) to identify the John Doe Emergency Services Unit officers who Plaintiff alleges violated his rights at OBCC on August 2, 2021, and August 3, 2021. It is therefore ordered that the New York City Law Department, which is the attorney for and agent of the DOC, must ascertain the identity and

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed *in forma pauperis*. See 28 U.S.C. § 1915(b)(1).

badge number of each John Doe whom Plaintiff seeks to sue here and the address where the defendant may be served.² The New York City Law Department must provide this information to Plaintiff and the Court within sixty days of the date of this order.

Within thirty days of receiving this information, Plaintiff must file an amended complaint naming the John Doe defendants. The amended complaint will replace, not supplement, the original complaint. An amended complaint form that Plaintiff should complete is attached to this order. Once Plaintiff has filed an amended complaint, the Court will screen the amended complaint and, if necessary, issue an order asking Defendants to waive service.

B. Application for *pro bono* counsel

Plaintiff has also filed an application for the Court to request *pro bono* counsel. (ECF 4.) The factors to be considered in ruling on an indigent litigant's request for counsel include the merits of the case, Plaintiff's efforts to obtain a lawyer, and Plaintiff's ability to gather the facts and present the case if unassisted by counsel. *See Cooper v. A. Sargenti Co.*, 877 F.2d 170, 172 (2d Cir. 1989); *Hodge v. Police Officers*, 802 F.2d 58, 60-62 (2d Cir. 1986). Of these, the merits are "[t]he factor which command[s] the most attention." *Cooper*, 877 F.2d at 172. Because it is too early in the proceedings for the Court to assess the merits of the action, Plaintiff's motion for counsel is denied without prejudice to renewal at a later date.

² If the Doe defendant is a current or former DOC employee or official, the New York City Law Department should note in the response to this order that an electronic request for a waiver of service can be made under the e-service agreement for cases involving DOC defendants, rather than by personal service at a DOC facility. If the Doe defendant is not a current or former DOC employee or official, but otherwise works or worked at a DOC facility, the New York City Law Department must provide a residential address where the individual may be served.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order and the complaint to the New York City Law Department at: 100 Church Street, New York, New York 10007.

The Court denies Plaintiff's application for the Court to request *pro bono* counsel (ECF 4) without prejudice to renewal at a later date.

The Clerk of Court is directed to mail a copy of this order to Plaintiff, together with an information package.

SO ORDERED.

Dated: November 2, 2021
New York, New York



ANALISA TORRES
United States District Judge